

106TH CONGRESS  
2D SESSION

# S. 2690

To reduce the risk that innocent persons may be executed, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

JUNE 7 (legislative day, JUNE 6), 2000

Mr. LEAHY (for himself, Mr. SMITH of Oregon, Ms. COLLINS, Mr. LEVIN, Mr. JEFFORDS, Mr. FEINGOLD, Mr. MOYNIHAN, Mr. AKAKA, Mr. KERREY, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To reduce the risk that innocent persons may be executed,  
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Innocence Protection Act of 2000”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EXONERATING THE INNOCENT THROUGH DNA TESTING

Sec. 101. Findings and purposes.

- Sec. 102. DNA testing in Federal criminal justice system.  
 Sec. 103. DNA testing in State criminal justice systems.  
 Sec. 104. Prohibition pursuant to section 5 of the 14th amendment.

## TITLE II—ENSURING COMPETENT LEGAL SERVICES IN CAPITAL CASES

- Sec. 201. Amendments to Byrne grant programs.  
 Sec. 202. Effect on procedural default rules.  
 Sec. 203. Capital representation grants.

## TITLE III—COMPENSATING THE UNJUSTLY CONDEMNED

- Sec. 301. Increased compensation in Federal cases.  
 Sec. 302. Compensation in State death penalty cases.

## TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Accommodation of State interests in Federal death penalty prosecutions.  
 Sec. 402. Alternative of life imprisonment without possibility of release.  
 Sec. 403. Right to an informed jury.  
 Sec. 404. Annual reports.  
 Sec. 405. Discretionary appellate review.  
 Sec. 406. Sense of Congress regarding the execution of juvenile offenders and the mentally retarded.

# 1 **TITLE I—EXONERATING THE IN-** 2 **NOCENT THROUGH DNA** 3 **TESTING**

## 4 **SEC. 101. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress makes the following find-  
 6 ings:

7 (1) Over the past decade, deoxyribonucleic acid  
 8 testing (referred to in this section as “DNA test-  
 9 ing”) has emerged as the most reliable forensic tech-  
 10 nique for identifying criminals when biological mate-  
 11 rial is left at a crime scene.

12 (2) Because of its scientific precision, DNA  
 13 testing can, in some cases, conclusively establish the  
 14 guilt or innocence of a criminal defendant. In other

1 cases, DNA testing may not conclusively establish  
2 guilt or innocence, but may have significant pro-  
3 bative value to a finder of fact.

4 (3) While DNA testing is increasingly common-  
5 place in pretrial investigations today, it was not  
6 widely available in cases tried prior to 1994. More-  
7 over, new forensic DNA testing procedures have  
8 made it possible to get results from minute samples  
9 that could not previously be tested, and to obtain  
10 more informative and accurate results than earlier  
11 forms of forensic DNA testing could produce. Con-  
12 sequently, in some cases convicted inmates have  
13 been exonerated by new DNA tests after earlier tests  
14 had failed to produce definitive results.

15 (4) Since DNA testing is often feasible on rel-  
16 evant biological material that is decades old, it can,  
17 in some circumstances, prove that a conviction that  
18 predated the development of DNA testing was based  
19 upon incorrect factual findings. Uniquely, DNA evi-  
20 dence showing innocence, produced decades after a  
21 conviction, provides a more reliable basis for estab-  
22 lishing a correct verdict than any evidence proffered  
23 at the original trial. DNA testing, therefore, can and  
24 has resulted in the post-conviction exoneration of in-  
25 nocent men and women.

1           (5) In the past decade, there have been more  
2           than 65 post-conviction exonerations in the United  
3           States and Canada based upon DNA testing. At  
4           least 8 individuals sentenced to death have been ex-  
5           onerated through post-conviction DNA testing, some  
6           of whom came within days of being executed.

7           (6) The 2 States that have established statutory  
8           processes for post-conviction DNA testing, Illinois  
9           and New York, have the most post-conviction DNA  
10          exonerations, 14 and 7, respectively.

11          (7) The advent of DNA testing raises serious  
12          concerns regarding the prevalence of wrongful con-  
13          victions, especially wrongful convictions arising out  
14          of mistaken eyewitness identification testimony. Ac-  
15          cording to a 1996 Department of Justice study enti-  
16          tled “Convicted by Juries, Exonerated by Science:  
17          Case Studies of Post-Conviction DNA Exonera-  
18          tions”, in approximately 20 to 30 percent of the  
19          cases referred for DNA testing, the results excluded  
20          the primary suspect. Without DNA testing, many of  
21          these individuals might have been wrongfully con-  
22          victed.

23          (8) Laws in more than 30 States require that  
24          a motion for a new trial based on newly discovered  
25          evidence of innocence be filed within 6 months or

1 less. These laws are premised on the belief—inappli-  
2 cable to DNA testing—that evidence becomes less  
3 reliable over time. Such time limits have been used  
4 to deny inmates access to DNA testing, even when  
5 guilt or innocence could be conclusively established  
6 by such testing. For example, in *Dedge v. Florida*,  
7 723 So.2d 322 (Fla. Dist. Ct. App. 1998), the court  
8 without opinion affirmed the denial of a motion to  
9 release trial evidence for the purpose of DNA test-  
10 ing. The trial court denied the motion as proce-  
11 durally barred under the 2-year limitation on claims  
12 of newly discovered evidence established by the State  
13 of Florida, which has since adopted a 6-month limi-  
14 tation on such claims.

15 (9) Even when DNA testing has been done and  
16 has persuasively demonstrated the actual innocence  
17 of an inmate, States have sometimes relied on time  
18 limits and other procedural barriers to deny release.

19 (10) The National Commission on the Future  
20 of DNA Evidence, a Federal panel established by  
21 the Department of Justice and comprised of law en-  
22 forcement, judicial, and scientific experts, has issued  
23 a report entitled “Recommendations For Handling  
24 Post-Conviction DNA Applications” that urges post-  
25 conviction DNA testing in 2 carefully defined cat-

1 egories of cases, notwithstanding procedural rules  
2 that could be invoked to preclude such testing, and  
3 notwithstanding the inability of the inmate to pay  
4 for the testing.

5 (11) The number of cases in which post-convic-  
6 tion DNA testing is appropriate is relatively small  
7 and will decrease as pretrial testing becomes more  
8 common and accessible.

9 (12) The cost of DNA testing has also de-  
10 creased in recent years. The typical case, involving  
11 the analysis of 8 samples, currently costs between  
12 \$2,400 and \$5,000, depending upon jurisdictional  
13 differences in personnel costs.

14 (13) In 1994, Congress authorized funding to  
15 improve the quality and availability of DNA analysis  
16 for law enforcement identification purposes. Since  
17 then, States have been awarded over \$50,000,000 in  
18 DNA-related grants.

19 (14) Although the Supreme Court has never an-  
20 nounced a standard for addressing constitutional  
21 claims of innocence, in *Herrera v. Collins*, 506 U.S.  
22 390 (1993), a majority of the Court expressed the  
23 view that, “a truly persuasive demonstration of ‘ac-  
24 tual innocence’” made after trial would render im-  
25 position of punishment by a State unconstitutional.

1           (15) If biological material is not subjected to  
2       DNA testing in appropriate cases, there is a signifi-  
3       cant risk that persuasive evidence of innocence will  
4       not be detected and, accordingly, that innocent per-  
5       sons will be unconstitutionally incarcerated or exe-  
6       cuted.

7           (16) To prevent violations of the Constitution  
8       of the United States that the Supreme Court antici-  
9       pated in *Herrera v. Collins*, it is necessary and prop-  
10      er to enact national legislation that ensures that the  
11      Federal Government and the States will permit  
12      DNA testing in appropriate cases.

13          (17) There is also a compelling need to ensure  
14      the preservation of biological material for post-con-  
15      viction DNA testing. Since 1992, the Innocence  
16      Project at the Benjamin N. Cardozo School of Law  
17      has received thousands of letters from inmates who  
18      claim that DNA testing could prove them innocent.  
19      In over 70 percent of those cases in which DNA  
20      testing could have been dispositive of guilt or inno-  
21      cence if the biological material were available, the  
22      material had been destroyed or lost. In two-thirds of  
23      the cases in which the evidence was found, and DNA  
24      testing conducted, the results have exonerated the  
25      inmate.

1           (18) In at least 14 cases, post-conviction DNA  
2       testing that has exonerated a wrongly convicted per-  
3       son has also provided evidence leading to the appre-  
4       hension of the actual perpetrator, thereby enhancing  
5       public safety. This would not have been possible if  
6       the biological evidence had been destroyed.

7       (b) PURPOSES.—The purposes of this title are to—

8           (1) substantially implement the Recommenda-  
9       tions of the National Commission on the Future of  
10      DNA Evidence in the Federal criminal justice sys-  
11      tem, by ensuring the availability of DNA testing in  
12      appropriate cases;

13          (2) prevent the imposition of unconstitutional  
14      punishments through the exercise of power granted  
15      by clause 1 of section 8 and clause 2 of section 9  
16      of article I of the Constitution of the United States  
17      and section 5 of the 14th amendment to the Con-  
18      stitution of the United States; and

19          (3) ensure that wrongfully convicted persons  
20      have an opportunity to establish their innocence  
21      through DNA testing, by requiring the preservation  
22      of DNA evidence for a limited period.

1 **SEC. 102. DNA TESTING IN FEDERAL CRIMINAL JUSTICE**  
 2 **SYSTEM.**

3 (a) IN GENERAL.—Part VI of title 28, United States  
 4 Code, is amended by inserting after chapter 155 the fol-  
 5 lowing:

6 **“CHAPTER 156—DNA TESTING**

“Sec.

“2291. DNA testing.

“2292. Preservation of biological material.

7 **“§ 2291. DNA testing**

8 “(a) APPLICATION.—Notwithstanding any other pro-  
 9 vision of law, a person in custody pursuant to the judg-  
 10 ment of a court established by an Act of Congress may,  
 11 at any time after conviction, apply to the court that en-  
 12 tered the judgment for forensic DNA testing of any bio-  
 13 logical material that—

14 “(1) is related to the investigation or prosecu-  
 15 tion that resulted in the judgment;

16 “(2) is in the actual or constructive possession  
 17 of the Government; and

18 “(3) was not previously subjected to DNA test-  
 19 ing, or can be subjected to retesting with new DNA  
 20 techniques that provide a reasonable likelihood of  
 21 more accurate and probative results.

22 “(b) NOTICE TO GOVERNMENT.—

23 “(1) IN GENERAL.—The court shall notify the  
 24 Government of an application made under subsection

1 (a) and shall afford the Government an opportunity  
2 to respond.

3 “(2) PRESERVATION OF REMAINING BIOLOGI-  
4 CAL MATERIAL.—Upon receiving notice of an appli-  
5 cation made under subsection (a), the Government  
6 shall take such steps as are necessary to ensure that  
7 any remaining biological material that was secured  
8 in connection with the case is preserved pending the  
9 completion of proceedings under this section.

10 “(c) ORDER.—The court shall order DNA testing  
11 pursuant to an application made under subsection (a)  
12 upon a determination that testing may produce noncumu-  
13 lative, exculpatory evidence relevant to the claim of the  
14 applicant that the applicant was wrongfully convicted or  
15 sentenced.

16 “(d) COST.—The cost of DNA testing ordered under  
17 subsection (c) shall be borne by the Government or the  
18 applicant, as the court may order in the interests of jus-  
19 tice, if it is shown that the applicant is not indigent and  
20 possesses the means to pay.

21 “(e) COUNSEL.—The court may at any time appoint  
22 counsel for an indigent applicant under this section.

23 “(f) POST-TESTING PROCEDURES.—

24 “(1) PROCEDURES FOLLOWING RESULTS UNFA-  
25 VORABLE TO APPLICANT.—If the results of DNA

1 testing conducted under this section are unfavorable  
2 to the applicant, the court—

3 “(A) shall dismiss the application; and

4 “(B) in the case of an applicant who is not  
5 indigent, may assess the applicant for the cost  
6 of such testing.

7 “(2) PROCEDURES FOLLOWING RESULTS FA-  
8 VORABLE TO APPLICANT.—If the results of DNA  
9 testing conducted under this section are favorable to  
10 the applicant, the court shall—

11 “(A) order a hearing, notwithstanding any  
12 provision of law that would bar such a hearing;  
13 and

14 “(B) enter any order that serves the inter-  
15 ests of justice, including an order—

16 “(i) vacating and setting aside the  
17 judgment;

18 “(ii) discharging the applicant if the  
19 applicant is in custody;

20 “(iii) resentencing the applicant; or

21 “(iv) granting a new trial.

22 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-  
23 tion shall be construed to limit the circumstances under  
24 which a person may obtain DNA testing or other post-  
25 conviction relief under any other provision of law.

1 **“§ 2292. Preservation of biological material**

2 “(a) IN GENERAL.—Notwithstanding any other pro-  
3 vision of law and subject to subsection (b), the Govern-  
4 ment shall preserve any biological material secured in con-  
5 nection with a criminal case for such period of time as  
6 any person remains incarcerated in connection with that  
7 case.

8 “(b) EXCEPTION.—The Government may destroy bio-  
9 logical material before the expiration of the period of time  
10 described in subsection (a) if—

11 “(1) the Government notifies any person who  
12 remains incarcerated in connection with the case,  
13 and any counsel of record or public defender organi-  
14 zation for the judicial district in which the judgment  
15 of conviction for such person was entered, of—

16 “(A) the intention of the Government to  
17 destroy the material; and

18 “(B) the provisions of this chapter;

19 “(2) no person makes an application under sec-  
20 tion 2291(a) within 90 days of receiving notice  
21 under paragraph (1) of this subsection; and

22 “(3) no other provision of law requires that  
23 such biological material be preserved.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
25 The analysis for part VI of title 28, United States Code,

1 is amended by inserting after the item relating to chapter  
 2 155 the following:

**“156. DNA Testing ..... 2291”.**

3 **SEC. 103. DNA TESTING IN STATE CRIMINAL JUSTICE SYS-**  
 4 **TEMS.**

5 (a) DNA IDENTIFICATION GRANT PROGRAM.—Sec-  
 6 tion 2403 of title I of the Omnibus Crime Control and  
 7 Safe Streets Act of 1968 (42 U.S.C. 3796kk-2) is  
 8 amended—

9 (1) in paragraph (2)—

10 (A) in the matter preceding subparagraph

11 (A), by striking “shall” and inserting “will”;

12 (B) in subparagraph (C), by striking “is  
 13 charged” and inserting “was charged or con-  
 14 victed”; and

15 (C) in subparagraph (D), by striking  
 16 “and” at the end;

17 (2) in paragraph (3)—

18 (A) by striking “shall” and inserting  
 19 “will”; and

20 (B) by striking the period at the end and  
 21 inserting “; and”; and

22 (3) by adding at the end the following:

23 “(4) the State will—

24 “(A) preserve all biological material se-  
 25 cured in connection with a State criminal case

1 for not less than the period of time that biologi-  
 2 cal material is required to be preserved under  
 3 section 2292 of title 28, United States Code, in  
 4 the case of a person incarcerated in connection  
 5 with a Federal criminal case; and

6 “(B) make DNA testing available to any  
 7 person convicted in State court to the same ex-  
 8 tent, and under the same conditions, that DNA  
 9 testing is available under section 2291 of title  
 10 28, United States Code, to any person convicted  
 11 in a court established by an Act of Congress.”.

12 (b) DRUG CONTROL AND SYSTEM IMPROVEMENT  
 13 GRANT PROGRAM.—Section 503(a)(12) of title I of the  
 14 Omnibus Crime Control and Safe Streets Act of 1968 (42  
 15 U.S.C. 3753(a)(12)) is amended—

16 (1) in subparagraph (B)—

17 (A) in clause (iii), by striking “is charged”  
 18 and inserting “was charged or convicted”; and

19 (B) in clause (iv), by striking “and” at the  
 20 end;

21 (2) in subparagraph (C), by striking the period  
 22 at the end and inserting “; and”; and

23 (3) by adding at the end the following:

24 “(D) the State will—

1 “(i) preserve all biological material se-  
2 cured in connection with a State criminal  
3 case for not less than the period of time  
4 that biological material is required to be  
5 preserved under section 2292 of title 28,  
6 United States Code, in the case of a per-  
7 son incarcerated in connection with a Fed-  
8 eral criminal case; and

9 “(ii) make DNA testing available to a  
10 person convicted in State court to the  
11 same extent, and under the same condi-  
12 tions, that DNA testing is available under  
13 section 2291 of title 28, United States  
14 Code, to a person convicted in a court es-  
15 tablished by an Act of Congress.”.

16 (c) PUBLIC SAFETY AND COMMUNITY POLICING  
17 GRANT PROGRAM.—Section 1702(c) of title I of the Om-  
18 nibus Crime Control and Safe Streets Act of 1968 (42  
19 U.S.C. 3796dd–1(c)) is amended—

20 (1) in paragraph (10), by striking “and” at the  
21 end;

22 (2) in paragraph (11), by striking the period at  
23 the end and inserting “; and”; and

24 (3) by adding at the end the following:

1           “(12) if any part of funds received from a grant  
2           made under this subchapter is to be used to develop  
3           or improve a DNA analysis capability in a forensic  
4           laboratory, or to obtain or analyze DNA samples for  
5           inclusion in the Combined DNA Index System  
6           (CODIS), certify that—

7                   “(A) DNA analyses performed at such lab-  
8                   oratory will satisfy or exceed the current stand-  
9                   ards for a quality assurance program for DNA  
10                  analysis, issued by the Director of the Federal  
11                  Bureau of Investigation under section 210303  
12                  of the DNA Identification Act of 1994 (42  
13                  U.S.C. 14131);

14                  “(B) DNA samples and analyses obtained  
15                  and performed by such laboratory will be acces-  
16                  sible only—

17                          “(i) to criminal justice agencies for  
18                          law enforcement purposes;

19                          “(ii) in judicial proceedings, if other-  
20                          wise admissible under applicable statutes  
21                          and rules;

22                          “(iii) for criminal defense purposes, to  
23                          a defendant, who shall have access to sam-  
24                          ples and analyses performed in connection

1 with the case in which the defendant was  
2 charged or convicted; or

3 “(iv) if personally identifiable infor-  
4 mation is removed, for a population statis-  
5 tics database, for identification research  
6 and protocol development purposes, or for  
7 quality control purposes;

8 “(C) the laboratory and each analyst per-  
9 forming DNA analyses at the laboratory will  
10 undergo, at regular intervals not exceeding 180  
11 days, external proficiency testing by a DNA  
12 proficiency testing program that meets the  
13 standards issued under section 210303 of the  
14 DNA Identification Act of 1994 (42 U.S.C.  
15 14131); and

16 “(D) the State will—

17 “(i) preserve all biological material se-  
18 cured in connection with a State criminal  
19 case for not less than the period of time  
20 that biological material is required to be  
21 preserved under section 2292 of title 28,  
22 United States Code, in the case of a per-  
23 son incarcerated in connection with a Fed-  
24 eral criminal case; and

1 “(ii) make DNA testing available to  
 2 any person convicted in State court to the  
 3 same extent, and under the same condi-  
 4 tions, that DNA testing is available under  
 5 section 2291 of title 28, United States  
 6 Code, to a person convicted in a court es-  
 7 tablished by an Act of Congress.”.

8 **SEC. 104. PROHIBITION PURSUANT TO SECTION 5 OF THE**  
 9 **14TH AMENDMENT.**

10 (a) REQUEST FOR DNA TESTING.—

11 (1) IN GENERAL.—No State shall deny a re-  
 12 quest, made by a person in custody resulting from  
 13 a State court judgment, for DNA testing of biologi-  
 14 cal material that—

15 (A) is related to the investigation or pros-  
 16 ecution that resulted in the conviction of the  
 17 person or the sentence imposed on the person;

18 (B) is in the actual or constructive posses-  
 19 sion of the State; and

20 (C) was not previously subjected to DNA  
 21 testing, or can be subjected to retesting with  
 22 new DNA techniques that provide a reasonable  
 23 likelihood of more accurate and probative re-  
 24 sults.

1           (2) EXCEPTION.—A State may deny a request  
 2           under paragraph (1) upon a judicial determination  
 3           that testing could not produce noncumulative evi-  
 4           dence establishing a reasonable probability that the  
 5           person was wrongfully convicted or sentenced.

6           (b) OPPORTUNITY TO PRESENT RESULTS OF DNA  
 7   TESTING.—No State shall rely upon a time limit or proce-  
 8   dural default rule to deny a person an opportunity to  
 9   present noncumulative, exculpatory DNA results in court,  
 10   or in an executive or administrative forum in which a deci-  
 11   sion is made in accordance with procedural due process.

12          (c) REMEDY.—A person may enforce subsections (a)  
 13   and (b) in a civil action for declaratory or injunctive relief,  
 14   filed either in a State court of general jurisdiction or in  
 15   a district court of the United States, naming either the  
 16   State or an executive or judicial officer of the State as  
 17   defendant. No State or State executive or judicial officer  
 18   shall have immunity from actions under this subsection.

19   **TITLE       II—ENSURING       COM-**  
 20   **PETENT LEGAL SERVICES IN**  
 21   **CAPITAL CASES**

22   **SEC. 201. AMENDMENTS TO BYRNE GRANT PROGRAMS.**

23          (a) CERTIFICATION REQUIREMENT; FORMULA  
 24   GRANTS.—Section 503 of title I of the Omnibus Crime

1 Control and Safe Streets Act of 1968 (42 U.S.C. 3753)  
 2 is amended—

3 (1) in subsection (a), by adding at the end the  
 4 following:

5 “(13) If the State prescribes, authorizes, or  
 6 permits the penalty of death for any offense, a cer-  
 7 tification that the State has established and main-  
 8 tains an effective system for providing competent  
 9 legal services to indigents at every phase of a State  
 10 criminal prosecution in which a death sentence is  
 11 sought or has been imposed, up to and including di-  
 12 rect appellate review and post-conviction review in  
 13 State court.”; and

14 (2) in subsection (b)—

15 (A) by striking “(b) Within 30 days after  
 16 the date of enactment of this part, the” and in-  
 17 serting the following:

18 “(b) REGULATIONS.—

19 “(1) IN GENERAL.—The”; and

20 (B) by adding at the end the following:

21 “(2) CERTIFICATION REGULATIONS.—The Di-  
 22 rector of the Administrative Office of the United  
 23 States Courts, after notice and an opportunity for  
 24 comment, shall promulgate regulations specifying  
 25 the elements of an effective system within the mean-

1       ing of subsection (a)(13), which elements shall  
2       include—

3               “(A) a centralized and independent ap-  
4       pointing authority, which shall have authority  
5       and responsibility to—

6               “(i) recruit attorneys who are quali-  
7       fied to represent indigents in the capital  
8       proceedings specified in subsection (a)(13);

9               “(ii) draft and annually publish a ros-  
10      ter of qualified attorneys;

11              “(iii) draft and annually publish quali-  
12      fications and performance standards that  
13      attorneys must satisfy to be listed on the  
14      roster and procedures by which qualified  
15      attorneys are identified;

16              “(iv) periodically review the roster,  
17      monitor the performance of all attorneys  
18      appointed, provide a mechanism by which  
19      members of the Bar may comment on the  
20      performance of their peers, and delete the  
21      name of any attorney who fails to complete  
22      regular training programs on the represen-  
23      tation of clients in capital cases, fails to  
24      meet performance standards in a case to  
25      which the attorney is appointed, or other-

1 wise fails to demonstrate continuing com-  
2 petence to represent clients in capital  
3 cases;

4 “(v) conduct or sponsor specialized  
5 training programs for attorneys rep-  
6 resenting clients in capital cases;

7 “(vi) appoint lead counsel and co-  
8 counsel from the roster to represent a de-  
9 fendant in a capital case promptly upon re-  
10 ceiving notice of the need for an appoint-  
11 ment from the relevant State court; and

12 “(vii) report the appointment, or the  
13 failure of the defendant to accept such ap-  
14 pointment, to the court requesting the ap-  
15 pointment;

16 “(B) compensation of private attorneys for  
17 actual time and service, computed on an hourly  
18 basis and at a reasonable hourly rate in light of  
19 the qualifications and experience of the attorney  
20 and the local market for legal representation in  
21 cases reflecting the complexity and responsi-  
22 bility of capital cases;

23 “(C) reimbursement of private attorneys  
24 and public defender organizations for attorney  
25 expenses reasonably incurred in the representa-

1           tion of a client in a capital case, computed on  
 2           an hourly basis reflecting the local market for  
 3           such services; and

4                   “(D) reimbursement of private attorneys  
 5           and public defender organizations for the rea-  
 6           sonable costs of law clerks, paralegals, inves-  
 7           tigators, experts, scientific tests, and other sup-  
 8           port services necessary in the representation of  
 9           a defendant in a capital case, computed on an  
 10          hourly basis reflecting the local market for such  
 11          services.”.

12          (b) CERTIFICATION REQUIREMENT; DISCRETIONARY  
 13   GRANTS.—Section 517(a) of title I of the Omnibus Crime  
 14   Control and Safe Streets Act of 1968 (42 U.S.C. 3763(a))  
 15   is amended—

16           (1) in paragraph (3), by striking “and” at the  
 17          end;

18           (2) in paragraph (4), by striking the period at  
 19          the end and inserting “; and”; and

20           (3) by adding at the end the following:

21                   “(5) satisfies the certification requirement es-  
 22          tablished by section 503(a)(13).”.

23          (c) DIRECTOR’S REPORTS TO CONGRESS.—Section  
 24   522(b) of title I of the Omnibus Crime Control and Safe  
 25   Streets Act of 1968 (42 U.S.C. 3766b(b)) is amended—

1           (1) in paragraph (4), by striking “and” at the  
2       end;

3           (2) by redesignating paragraph (5) as para-  
4       graph (6); and

5           (3) by inserting after paragraph (4) the fol-  
6       lowing:

7           “(5) descriptions and a comparative analysis of  
8       the systems established by each State in order to  
9       satisfy the certification requirement established by  
10      section 503(a)(13), except that the descriptions and  
11      the comparative analysis shall include—

12           “(A) the qualifications and performance  
13      standards established pursuant to section  
14      503(b)(2)(A)(iii);

15           “(B) the rates of compensation paid under  
16      section 503(b)(2)(B); and

17           “(C) the rates of reimbursement paid  
18      under subparagraphs (C) and (D) of section  
19      503(b)(2); and”.

20       (d) EFFECTIVE DATE.—

21           (1) IN GENERAL.—Subject to paragraph (2),  
22       the amendments made by this section shall apply  
23       with respect to any application submitted on or after  
24       the date that is 1 year after the date of enactment  
25       of this Act.

1           (2) EXCEPTION.—The amendments made by  
 2           this section shall not take effect until the amount  
 3           made available for a fiscal year to carry out part E  
 4           of title I of the Omnibus Crime Control and Safe  
 5           Streets Act of 1968 equals or exceeds an amount  
 6           that is \$50,000,000 greater than the amount made  
 7           available to carry out that part for fiscal year 2000.

8           (e) REGULATIONS.—The Director of the Administra-  
 9           tive Office of the United States Courts shall issue all regu-  
 10          lations necessary to carry out the amendments made by  
 11          this section not later than 180 days before the effective  
 12          date of those regulations.

13 **SEC. 202. EFFECT ON PROCEDURAL DEFAULT RULES.**

14          Section 2254(e) of title 28, United States Code, is  
 15          amended—

16               (1) in paragraph (1), by striking “In a pro-  
 17               ceeding” and inserting “Except as provided in para-  
 18               graph (3), in a proceeding”; and

19               (2) by adding at the end the following:

20               “(3) In a proceeding instituted by an indigent  
 21               applicant under sentence of death, the court shall  
 22               neither presume a finding of fact made by a State  
 23               court to be correct nor decline to consider a claim  
 24               on the ground that the applicant failed to raise such

claim in State court at the time and in the manner prescribed by State law, unless—

“(A) the State provided the applicant with legal services at the stage of the State proceedings at which the State court made the finding of fact or the applicant failed to raise the claim; and

“(B) the legal services the State provided satisfied the regulations promulgated by the Director of the Administrative Office of the United States Courts pursuant to section 503(b)(2) of title I of the Omnibus Crime Control and Safe Streets Act of 1968.”.

**SEC. 203. CAPITAL REPRESENTATION GRANTS.**

Section 3006A of title 18, United States Code, is amended—

(1) by redesignating subsections (i), (j), and (k) as subsections (j), (k), and (l), respectively; and

(2) by inserting after subsection (h) the following:

“(i) CAPITAL REPRESENTATION GRANTS.—

“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘capital case’—

“(i) means any criminal case in which a defendant prosecuted in a State court is

1 subject to a sentence of death or in which  
2 a death sentence has been imposed; and

3 “(ii) includes all proceedings filed in  
4 connection with the case, including trial,  
5 appellate, and Federal and State post-con-  
6 viction proceedings;

7 “(B) the term ‘defense services’ includes—

8 “(i) recruitment of counsel;

9 “(ii) training of counsel;

10 “(iii) legal and administrative support  
11 and assistance to counsel;

12 “(iv) direct representation of defend-  
13 ants, if the availability of other qualified  
14 counsel is inadequate to meet the need in  
15 the jurisdiction served by the grant recipi-  
16 ent; and

17 “(v) investigative, expert, or other  
18 services necessary for adequate representa-  
19 tion; and

20 “(C) the term ‘Director’ means the Direc-  
21 tor of the Administrative Office of the United  
22 States Courts.

23 “(2) GRANT AWARD AND CONTRACT AUTHOR-  
24 ITY.—Notwithstanding subsection (g), the Director  
25 shall award grants to, or enter into contracts with,

1 public agencies or private nonprofit organizations for  
2 the purpose of providing defense services in capital  
3 cases.

4 “(3) PURPOSES.—Grants and contracts award-  
5 ed under this subsection shall be used in connection  
6 with capital cases in the jurisdiction of the grant re-  
7 cipient for 1 or more of the following purposes:

8 “(A) Enhancing the availability, com-  
9 petence, and prompt assignment of counsel.

10 “(B) Encouraging continuity of represen-  
11 tation between Federal and State proceedings.

12 “(C) Decreasing the cost of providing  
13 qualified counsel.

14 “(D) Increasing the efficiency with which  
15 such cases are resolved.

16 “(4) GUIDELINES.—The Director, in consulta-  
17 tion with the Judicial Conference of the United  
18 States, shall develop guidelines to ensure that de-  
19 fense services provided by recipients of grants and  
20 contracts awarded under this subsection are con-  
21 sistent with applicable legal and ethical proscriptions  
22 governing the duties of counsel in capital cases.

23 “(5) CONSULTATION.—In awarding grants and  
24 contracts under this subsection, the Director shall  
25 consult with representatives of the highest State

1 court, the organized bar, and the defense bar of the  
 2 jurisdiction to be served by the recipient of the grant  
 3 or contract.”.

## 4 **TITLE III—COMPENSATING THE** 5 **UNJUSTLY CONDEMNED**

### 6 **SEC. 301. INCREASED COMPENSATION IN FEDERAL CASES.**

7 Section 2513 of title 28, United States Code, is  
 8 amended by striking subsection (e) and inserting the fol-  
 9 lowing:

10 “(e) DAMAGES.—

11 “(1) IN GENERAL.—The amount of damages  
 12 awarded in an action described in subsection (a)  
 13 shall not exceed \$50,000 for each 12-month period  
 14 of incarceration, except that a plaintiff who was un-  
 15 justly sentenced to death may be awarded not more  
 16 than \$100,000 for each 12-month period of incarcer-  
 17 ation.

18 “(2) FACTORS FOR CONSIDERATION IN ASSESS-  
 19 ING DAMAGES.—In assessing damages in an action  
 20 described in subsection (a), the court shall  
 21 consider—

22 “(A) the circumstances surrounding the  
 23 unjust conviction of the plaintiff, including any  
 24 misconduct by officers or employees of the Fed-  
 25 eral Government;

1           “(B) the length and conditions of the un-  
2           just incarceration of the plaintiff; and

3           “(C) the family circumstances, loss of  
4           wages, and pain and suffering of the plaintiff.”.

5 **SEC. 302. COMPENSATION IN STATE DEATH PENALTY**  
6 **CASES.**

7       (a) **CRIMINAL JUSTICE FACILITY CONSTRUCTION**  
8 **GRANT PROGRAM.**—Section 603(a) of title I of the Omni-  
9 bus Crime Control and Safe Streets Act of 1968 (42  
10 U.S.C. 3769b(a)) is amended—

11           (1) in paragraph (5), by striking “and” at the  
12       end;

13           (2) in paragraph (6), by striking the period at  
14       the end and inserting “; and”; and

15           (3) by adding at the end the following:

16           “(7) reasonable assurance that the applicant, or  
17       the State in which the applicant is located—

18           “(A) does not prescribe, authorize, or per-  
19       mit the penalty of death for any offense; or

20           “(B)(i) has established and maintains an  
21       effective procedure by which any person un-  
22       justly convicted of an offense against the State  
23       and sentenced to death may be awarded reason-  
24       able damages upon substantial proof that the

1 person did not commit any of the acts with  
 2 which the person was charged; and

3 “(ii)(I) the conviction of that person was  
 4 reversed or set aside on the ground that the  
 5 person was not guilty of the offense or offenses  
 6 of which the person was convicted;

7 “(II) the person was found not guilty of  
 8 such offense or offenses on new trial or rehear-  
 9 ing; or

10 “(III) the person was pardoned upon the  
 11 stated ground of innocence and unjust convic-  
 12 tion.”.

13 (b) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply with respect to any application  
 15 submitted on or after the date that is 1 year after the  
 16 date of enactment of this Act.

## 17 **TITLE IV—MISCELLANEOUS** 18 **PROVISIONS**

### 19 **SEC. 401. ACCOMMODATION OF STATE INTERESTS IN FED-** 20 **ERAL DEATH PENALTY PROSECUTIONS.**

21 (a) RECOGNITION OF STATE INTERESTS.—Chapter  
 22 228 of title 18, United States Code, is amended by adding  
 23 at the end the following:

1 **“§ 3599. Accommodation of State interests; certifi-**  
 2 **cation requirement**

3 “(a) IN GENERAL.—Notwithstanding any other pro-  
 4 vision of law, the Government shall not seek the death  
 5 penalty in any case initially brought before a district court  
 6 of the United States that sits in a State that does not  
 7 prescribe, authorize, or permit the imposition of such pen-  
 8 alty for the alleged conduct, except upon the certification  
 9 in writing of the Attorney General or the designee of the  
 10 Attorney General that—

11 “(1) the State does not have jurisdiction or re-  
 12 fuses to assume jurisdiction over the defendant with  
 13 respect to the alleged conduct;

14 “(2) the State has requested that the Federal  
 15 Government assume jurisdiction; or

16 “(3) the offense charged is an offense described  
 17 in section 32, 229, 351, 794, 1091, 1114, 1118,  
 18 1203, 1751, 1992, 2340A, or 2381, or chapter  
 19 113B.

20 “(b) STATE DEFINED.—In this section, the term  
 21 ‘State’ means each of the several States of the United  
 22 States, the District of Columbia, and the territories and  
 23 possessions of the United States.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—

2 The analysis for chapter 228 of title 18, United States

3 Code, is amended by adding at the end the following:

“3599. Accommodation of State interests; certification requirement.”.

4 **SEC. 402. ALTERNATIVE OF LIFE IMPRISONMENT WITHOUT**

5 **POSSIBILITY OF RELEASE.**

6 Section 408(l) of the Controlled Substances Act (21

7 U.S.C. 848(l)), is amended by striking the first 2 sen-

8 tences and inserting the following: “Upon a recommenda-

9 tion under subsection (k) that the defendant should be

10 sentenced to death or life imprisonment without possibility

11 of release, the court shall sentence the defendant accord-

12 ingly. Otherwise, the court shall impose any lesser sen-

13 tence that is authorized by law.”.

14 **SEC. 403. RIGHT TO AN INFORMED JURY.**

15 (a) ADDITIONAL REQUIREMENTS.—Section 20105 of

16 the Violent Crime Control and Law Enforcement Act of

17 1994 (42 U.S.C. 13705) is amended by striking subsection

18 (b) and inserting the following:

19 “(b) ADDITIONAL REQUIREMENTS.—To be eligible to

20 receive a grant under section 20103 or 20104, a State

21 shall provide assurances to the Attorney General that—

22 “(1) the State has implemented policies that

23 provide for the recognition of the rights and needs

24 of crime victims; and

1           “(2) in any capital case in which the jury has  
2           a role in determining the sentence imposed on the  
3           defendant, the court, at the request of the defend-  
4           ant, shall inform the jury of all statutorily author-  
5           ized sentencing options in the particular case, in-  
6           cluding applicable parole eligibility rules and  
7           terms.”.

8           (b) EFFECTIVE DATE.—The amendments made by  
9           this section shall apply with respect to any application for  
10          a grant under section 20103 or 20104 of the Violent  
11          Crime Control and Law Enforcement Act of 1994 (42  
12          U.S.C. 13703; 13704) that is submitted on or after the  
13          date that is 1 year after the date of enactment of this  
14          Act.

15       **SEC. 404. ANNUAL REPORTS.**

16          (a) REPORT.—Not later than 2 years after the date  
17          of enactment of this Act, and annually thereafter, the At-  
18          torney General shall prepare and transmit to Congress a  
19          report concerning the administration of capital punish-  
20          ment laws by the Federal Government and the States.

21          (b) REPORT ELEMENTS.—The report required under  
22          subsection (a) shall include substantially the same cat-  
23          egories of information as are included in the Bureau of  
24          Justice Statistics Bulletin entitled “Capital Punishment

1 1998” (December 1999, NCJ 179012), and the following  
2 additional categories of information:

3 (1) The percentage of death-eligible cases in  
4 which a death sentence is sought, and the percent-  
5 age in which it is imposed.

6 (2) The race of the defendants in death-eligible  
7 cases, including death-eligible cases in which a death  
8 sentence is not sought, and the race of the victims.

9 (3) An analysis of the effect of *Witherspoon v.*  
10 *Illinois*, 391 U.S. 510 (1968), and its progeny, on  
11 the composition of juries in capital cases, including  
12 the racial composition of such juries, and on the ex-  
13 clusion of otherwise eligible and available jurors  
14 from such cases.

15 (4) An analysis of the effect of peremptory  
16 challenges, by the prosecution and defense respec-  
17 tively, on the composition of juries in capital cases,  
18 including the racial composition of such juries, and  
19 on the exclusion of otherwise eligible and available  
20 jurors from such cases.

21 (5) The percentage of capital cases in which life  
22 without parole is available as an alternative to a  
23 death sentence, and the sentences imposed in such  
24 cases.

1           (6) The percentage of capital cases in which life  
2       without parole is not available as an alternative to  
3       a death sentence, and the sentences imposed in such  
4       cases.

5           (7) The percentage of capital cases in which  
6       counsel is retained by the defendant, and the per-  
7       centage in which counsel is appointed by the court.

8           (8) A comparative analysis of systems for ap-  
9       pointing counsel in capital cases in different States.

10          (9) A State-by-State analysis of the rates of  
11       compensation paid in capital cases to appointed  
12       counsel and their support staffs.

13          (10) The percentage of cases in which a death  
14       sentence or a conviction underlying a death sentence  
15       is vacated, reversed, or set aside, and the reasons  
16       therefore.

17       (c) PUBLIC DISCLOSURE.—The Attorney General or  
18       the Director of the Bureau of Justice Assistance, as ap-  
19       propriate, shall ensure that the reports referred to in sub-  
20       section (a) are—

21           (1) distributed to national print and broadcast  
22       media; and

23           (2) posted on an Internet website maintained  
24       by the Department of Justice.

1 **SEC. 405. DISCRETIONARY APPELLATE REVIEW.**

2 Section 2254(c) of title 28, United States Code, is  
3 amended—

4 (1) by inserting “(1)” after “(c)”; and

5 (2) by adding at the end the following:

6 “(2) For purposes of paragraph (1), if the highest  
7 court of a State has discretion to decline appellate review  
8 of a case or a claim, a petition asking that court to enter-  
9 tain a case or a claim is not an available State court proce-  
10 dure.”.

11 **SEC. 406. SENSE OF CONGRESS REGARDING THE EXECU-**  
12 **TION OF JUVENILE OFFENDERS AND THE**  
13 **MENTALLY RETARDED.**

14 It is the sense of Congress that the death penalty is  
15 disproportionate and offends contemporary standards of  
16 decency when applied to a person who is mentally retarded  
17 or who had not attained the age of 18 years at the time  
18 of the offense.

○